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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA
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7 JACKLYN G. RIGGS, an individual,

Case No. 3:22-cv-00124-LRH-CLB

8 Plaintiffs,

ORDER

9 v.

10 TRANSAMERICA LIFE INSURANCE
11 COMPANY, DOES I-XXX; and AB
CORPORATIONS A-Z, inclusive,

12 Defendants.
13

14 Before the Court is Plaintiff Jacklyn Riggs's motion for preferential trial setting (ECF No.
15 9). For the reasons explained below, the Court denies the motion.

16 In January 2022, Riggs sued Transamerica Life Insurance Company in Nevada state court.
17 Transamerica timely removed the case under 28 U.S.C. § 1332(a)(1) and 1441(a). Riggs does not
18 dispute the removal of the case to federal court but rather asks the Court to give her preferential
19 trial setting under Nev. Rev. Stat. § 16.025. Transamerica opposes Riggs's request and argues that
20 the Court should not apply Section 16.025 because it is a state procedural rule under *Erie Railroad*
21 *Co. v. Tompkins*, 304 U.S. 64 (1938).

22 *Erie* requires a federal court sitting in diversity to apply state substantive law and federal
23 procedural law. *Gasperini v. Ctr. for Humans., Inc.*, 518 U.S. 415, 427 (1996). "A substantive rule
24 is one that creates rights or obligations while a procedural rule defines a form and mode of
25 enforcing the substantive right or obligation." *Cooper v. Tokyo Elec. Power Co. Holdings, Inc.*,
26 960 F.3d 549, 557 (9th Cir. 2020) (quotation omitted). To classify a law as procedural or
27 substantive, a federal court applies the "'outcome-determination test,' which asks whether
28 applying federal law instead of state law would 'significantly affect' the litigation's outcome."

1 *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 839 (9th Cir. 2020). This test is not applied
 2 “mechanically, but rather, guided by the twin aims of the *Erie* rule: discouragement of forum-
 3 shopping and avoidance of inequitable administration of the laws.” *Cuprite Mine Partners LLC v.*
 4 *Anderson*, 809 F.3d 548, 555 (9th Cir. 2015) (quotation omitted). Though classifying a law may
 5 sometimes be a “challenging endeavor,” *Gasperini*, 518 U.S. at 427, the Court does not face such
 6 a challenge today.

7 The plain reading of Section 16.025 reveals that it is a procedural rule. Section 16.025 says
 8 in relevant part:

9 Upon the motion of a party to an action who is 70 years of age or older, the court
 10 *may* give preference in setting a date for the trial of the action, unless the court finds
 that the party does not have a substantial interest in the case as a whole.

11 Nev. Rev. Stat. § 16.025(1) (emphasis added). This subsection and the remaining subsections of
 12 the statute grant a judge the discretion to give preference in setting a date for the trial of an action,
 13 which is purely a procedural aspect of a case. The statute does not enlarge, restrict, or otherwise
 14 impact the availability of substantive rights or remedies. It merely encourages a trial judge to move
 15 up the trial date for an elderly litigant.

16 The procedural nature of Section 16.025 becomes even clearer when the Court applies the
 17 outcome determination test. If Riggs’s case remained in state court, Riggs would *not* be guaranteed
 18 preferential trial setting even though she satisfies the age requirement. Rather, the judge would
 19 have the discretion to give preference to her case when setting the trial date or the judge could
 20 refuse to do so. Even if the judge did exercise his or her discretion to give preference when setting
 21 the trial date, the applicable substantive law would remain the same and the same result on the
 22 merits would be reached as it would if preference had not been given. It is clear to the Court that
 23 application of Section 16.025 would not “significantly affect” the outcome of the case; the only
 24 difference would be that the outcome of the case would be decided sooner. Thus, Section 16.025
 25 is not outcome determinative and is best classified as a procedural rule under the *Erie* doctrine.

26 Notably, the only other court to address whether Section 16.025 is a procedural or
 27 substantive law concluded the same. *See Orlando v. Government Employees Insurance Company*,
 28 No. 22-CV-01904, 2021 WL 1342521, at *1–2 (D. Nev. Apr. 9, 2021) (holding that Section 16.025

1 is a procedural rule because it “merely permits litigants to move for earlier trial dates; it is not
2 ‘outcome-determinative’ and has no effect on the rights or remedies available in the underlying
3 suit”). Riggs’s citations to case law interpreting other states’ preferential trial setting statutes do
4 not persuade the Court to deviate from its conclusion or from *Orlando*. Three of the cases address
5 statutes that *mandate* preferential trial setting when certain conditions are met. *See, e.g., In re*
6 *PG&E Corp*, 2019 Bakr. LEXIS 2593 (Bankr. N.D. Cal. 2019) (interpreting Cal. Civ. Proc. Code
7 § 36 which states that “the court *shall* grant” preference). Those statutes differ from Section 16.025
8 which merely grants a judge the *discretion* to give preference when setting a trial date. To the
9 extent those cases conclude that preferential trial setting statutes are substantive, the Court finds
10 them inapplicable to classifying Section 16.025.

11 Riggs also relies on case law that found otherwise procedural rules to be substantive for
12 *Erie* purposes. For example, Riggs cites to case law that found Nevada’s medical malpractice law
13 that required a supportive medical expert affidavit to be substantive not procedural. That
14 requirement, however, differs from Section 16.025 because it influences the availability of a cause
15 of action: Without a supportive medical expert affidavit, a medical malpractice action does not
16 exist. *See Nev. Rev. Stat. § 41A.071* (“If an action for professional negligence is filed in the district
17 court, the district court shall dismiss the action, without prejudice, if the action is filed without an
18 affidavit”). Unlike the medical expert affidavit requirement, Section 16.025 does not affect
19 the rights or remedies available to the litigant.

20 Section 16.025 may encourage earlier trial dates for elderly litigants, but it is not an
21 outcome determinative rule. Thus, the Court finds that Section 16.025 is a state procedural rule
22 under *Erie* and declines to apply it. The Court, however, is sympathetic to Riggs’s situation as an
23 85-year-old litigant and believes that it is in the interest of both parties to see this lawsuit resolved
24 as soon as reasonably possible under the Federal Rules of Civil Procedure. Accordingly, the Court
25 refers the case to Magistrate Judge Carla Baldwin to conduct a case management conference to
26 determine if an expedited trial schedule can be accommodated under the federal rules and in
27 fairness to all parties.

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1 IT IS THEREFORE ORDERED that Riggs's motion for preferential trial setting under
2 Nev. Rev. Stat. § 16.025 is denied.

3 IT IS FURTHER ORDERED that the case is referred to Judge Carla Baldwin to conduct a
4 case management conference.

5 IT IS SO ORDERED.

6 DATED this 18th day of April, 2022

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8 LARRY R. HICKS
9 UNITED STATES DISTRICT JUDGE
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